

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO <i>ex rel.</i>)	
State Engineer, <i>et al.</i> ,)	69cv07941-MV/KK
)	
Plaintiffs,)	RIO CHAMA STREAM SYSTEM
)	
v.)	Section 3, Rio Cebolla
)	
RAMON ARAGON, <i>et al.</i> ,)	Subfile Nos. CHCB-001-0007,
)	CHCB-002-0001B,
Defendants.)	CHCB-002-0002C
)	CHCB-002-0009
)	

**RESPONSE TO STATE'S MOTION IN LIMINE TO EXCLUDE THE
TESTIMONY OF FRANCES QUINTANA, GUILLERMO COVA,
CHARLIE HIBNER, MALCOLM EBRIGHT, AND STEVE HARDIN
IN RIO CHAMA, SECTION 3, RIO CEBOLLA SUBFILES**

COMES NOW the undersigned attorney, Ted J. Trujillo, on behalf of the Defendants, Charlie Chacon and Geralda M. Chacon and the Delfin O. and Frances S. Quintana Trust, and responds to the State's Motion in Limine as follows.

I. BACKGROUND

The State overlooks the fact that "Francis Quintana" is a party opponent in this case and as such is entitled to present testimony as to the interest of the "Delfin O. and Frances S. Quintana Trust" in the disputed sub-files. The same is true for co-defendants Charlie Chacon and Geralda Chacon who have been listed as witnesses previously. Charlie Hibner, Malcolm Ebright and Steve Hardin are no longer listed as "expert" witnesses, following the Court's Memorandum Opinion and Order (Doc. 11108), entered February 17, 2016. They are listed as witnesses because they are still available and competent to testify as to certain facts related to the sub-files, whether in direct testimony

or in rebuttal, which testimony cannot be anticipated. Guillermo Cova is a successor in interest in the “Delfin O. and Frances S. Quintana Trust” who along with Hibner, Ebright and Hardin is competent to testify as to certain facts related to the sub-files, whether in direct testimony or in rebuttal.

II. ARGUMENT

Frances Quintana’s testimony, as a party-opponent is admissible under Fed.R.Civ.P. 801(d)(2)(B), which provides that the statement is not hearsay if she has manifested her adoption or belief in its truth. See *Admissibility of statement under Rule 801(d)(2)(B) of Federal Rules of Evidence, providing that statement is not hearsay if party-opponent has manifested adoption or belief in its truth, 156 A.L.R. Fed. 217.* Also, *Admissibility of party's own statement under Rule 801(d)(2)(A) of the Federal Rules of Evidence, 48 A.L.R. Fed. 922.*

Guillermo Cova is a successor in interest in the Delfin O. and Frances S. Quintana Family Trust as well as an agent or representative of the Trust for business purposes. In this capacity, Guillermo Cova is allowed to present testimony under Fed.R.Civ.P. 801 D.(2)(c)(d), including the oral statements of Delfin O. Quintana, now deceased, regarding the contested sub-files. See *Segura v. Molycorp, Inc., 1981-NMSC-116, 97 N.M. 13, 636 P. 2d 284.*

In referring to non-expert witnesses Charlie Hibner, Malcolm Ebright and Steve Hardin, the State states: “*As the defendants have never suggested that these witnesses have any personal knowledge of the beneficial use of water on the properties at issue from before 1907 to the present, the State submits that these witnesses can say nothing that will assist the Court in determining facts at issue in this case.”* [Page 3, State’s

Motion in Limine]. Defendants willingly concede that neither Hibner, Ebright nor Hardin have reached or are likely to reach the age of 120. Fortunately, under the Federal Rules of Evidence, there are other paths to presenting evidence of pre-1907 beneficial use of water which has endured to the present, including Fed.R.Civ.P. 803(20), the hearsay exception for “Reputation Concerning Boundaries or General History” - among other rules.

WHEREFORE, The State’s Motion in Limine to Exclude the Testimony of defense witnesses Frances Quintana, Guillermo Cova, Charlie Hibner, Malcolm Ebright and Steve Hardin, should be denied.

LAW OFFICES OF TED J. TRUJILLO

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Certificate of Service

I certify that on November 25, 2016, I filed the foregoing electronically through the CM?ECF system which caused the parties on the electronic service list to be served the Notice of Electronic filing.

/s/ Ted J. Trujillo
Ted J. Trujillo

